COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 413 of 2003

New India Assurance Co. Ltd. …. **Appellant.**

Versus

Sri Gopal Singh
and others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 7-11-2003 passed in M.A.C. Case No. 38 of 2000, Sri Gopal Singh & others Vs. Sri Mahendra Singh & others, by Motor Accident Claims Tribunal/District Judge, Udham Singh ***Nagar (in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.7,17,888/- as compensation along with interest @ 12% per annum, as mentioned in the impugned order, in favour of the claimant-respondent Nos. 1 to 5 under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was the result of contributory negligence on the part of drivers of the vehicles involved in the accident, and that the quantum of award and the interest are exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief facts of the case are that Dhyabn Singh (the deceased) has died in a motor accident occurred on 21-11-99 at 6 p.m. at village Jhankat due to rash and negligent driving of Tanker No. U.P. 2B/1636 by its driver with the result the deceased was hit by the offending vehicle, sustained grievous injuries and died.

Hence the claim has field by the dependents and legal heirs of the deceased. The Opposite Parties contested the case by filing their written statements. The appellant has inter alias asserted that the appellant has a right to contest the case under Section 170 of the Act. Plea of non-joinder of driver of the vehicle was also taken. Tribunal has framed necessary Issues in the Case. Ultimately, the Tribunal has held that the factum of rash and negligent driving of the offending vehicle by its deriver was fully proved on record from the evidence of eye witness Prahlad Singh (P.W.2) and also from the fact that charge-sheet has been filed against the driver Ram Babu. It has also been held that the accident was not the result of negligence or contributory negligence on the part of the deceased. The Tribunal has also found that the monthly income of the deceased was Rs. 4,902/-, thereby annul income was Rs. 58,824/-. After deducting one third form it, the annual loss of dependency was determined to be Rs. 39,216/-. The deceased was in the age group of 25-30 years, therefore, multiplier of 18 has been applied. Ultimately, the Tribunal has awarded total compensation of rs. 7,17,888/- along with interest @ 12% per annum, as mentioned in the impugned judgment and award.

We have heard learned counsel for the appellant, Mr. R.B.Agarwal as well as learned counsel for the claimant-respondent Nos. 1 to 5 and have perused the entire material on record including the impugned judgment and ward.

Although in the memo of appeal, finding of the Tribunal on the pint of negligence and quantum of compensation has been challenged, but the learned counsel for the appellant Insurance Company has failed to show us either that there has been collusion between the owner of the vehicle and the claimants or that there has been collusion between the owner of the vehicle and the claimants or that permission under Section 170 of the Act was granted by the Tribunal, therefore, it is not open to the appellant to take this stand in the appeal. It is well settled law that the appeal by the Insurance Company can be filed on limited ground under the provisions of the

Act. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456]*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in **(2002) 7, S.C.C. 456 (Supra)**, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

However, so far as contention that grant of interest @ 12% per annum by the Tribunal on the compensation amount is excessive, we are of the view that the rate of interest is already on the decline, therefore, in view of the Apex Court judgment in the Case of ***United India Insurance Co.Ltd. etc. etc. Vs Patricia Jean Mahajan & Ors. Etc. etc. [2002 (2) Apex Court Judgments, 100 (S.C.)],*** it will be in the fitness of things to reduce the rate of interest to8% instead of 12% per annum considering the present trend of rate of interest. To this extent alone, the impugned order shall stand modified. Rest of the findings of the learned Tribunal shall remain undisturbed.

With the observations aforementioned, the appeal is dismissed on merit. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

01-09-2004 **(B .S.Verma, J.)** **(P.C. Verma, J.)**

RCP